

Introduced by Senator Correa

February 18, 2011

An act to add Division 8.9 (commencing with Section 22992.10) to the Business and Professions Code, relating to cannabis, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 847, as introduced, Correa. Medical Cannabis Licensing Act.

Existing law, the Compassionate Use Act of 1996, an initiative measure, prohibits prosecution, pursuant to provisions of law relating to the possession or cultivation of marijuana, of a patient or a patient's primary caregiver who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

This bill would establish the Medical Cannabis Licensing Act, to require a producer, distributor, or seller to be licensed by the State Department of Public Health to engage in the production, distribution, or sale of medical marijuana, and would require the license to be renewed every 12 months. This bill would require an applicant for a license to provide specified information. This bill would require establishment of an indicia program, to be administered by the State Board of Equalization, to require traceable, secure indicia of licensure to be placed on medical marijuana, would require establishment of a product testing program and a facilities inspection program administered by the department, and would authorize assessment of related fees.

This bill would require all moneys collected to be deposited in the Medical Cannabis Licensing Fund, which would be created in the State Treasury, and would, except for moneys derived from penalties,

continuously appropriate moneys in the fund solely for the purpose of implementing, enforcing, and administering the licensing program.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 8.9 (commencing with Section 22992.10)
2 is added to the Business and Professions Code, to read:

3
4 DIVISION 8.9. MEDICAL CANNABIS LICENSING ACT

5
6 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

7
8 22992.10. (a) This division shall be known, and may be cited,
9 as the Medical Cannabis Licensing Act.

10 (b) The Legislature finds and declares all of the following:

11 (1) The people enacted the Compassionate Use Act to, in part,
12 ensure that seriously ill Californians have the right to obtain and
13 use marijuana for medical purposes where that medical use is
14 deemed appropriate and has been recommended by a physician,
15 and to provide related immunities from prosecution for patients,
16 primary caregivers, and physicians.

17 (2) However, the lack of an adequate regulatory structure for
18 the production, distribution, and sale of medical marijuana presents
19 California with many serious problems, including, but not limited
20 to, all of the following:

21 (A) Problems relating to the inability to ensure that the product
22 is not contaminated with pesticides or other dangerous chemicals.

23 (B) Problems relating to the security of the cultivation,
24 packaging, and retail facilities.

25 (C) Problems relating to the inability to ensure that medical
26 marijuana product is not diverted for nonmedical uses.

27 (D) Problems relating to the inability to prevent the introduction
28 of unauthorized product.

29 (3) Subsequent legislation, the Medical Marijuana Program,
30 provided some solutions by establishing a voluntary program for
31 the issuance of identification cards for persons authorized under
32 the Compassionate Use Act to protect them from arrest for

1 cultivation or possession of medical marijuana. However, the
2 program was only a partial solution.

3 (4) In enacting the Compassionate Use Act, the people
4 encouraged state government “to implement a plan to provide for
5 the safe and affordable distribution of marijuana to all patients in
6 medical need of marijuana.”

7 (5) By enacting this division the Legislature accepts that
8 invitation and challenge, and seeks to provide a complete,
9 functional, licensing scheme that would permit the secure
10 production, distribution, and sale of uncontaminated and affordable
11 medical marijuana to meet the needs of eligible patients under the
12 Compassionate Use Act and the Medical Marijuana Program.

13 22992.15. For purposes of this division, the following terms
14 have the following meanings:

15 (a) “Department” means the State Department of Public Health.

16 (b) “Board” means the State Board of Equalization.

17 (c) “Cannabis” or “marijuana” means all parts of the plant
18 *Cannabis sativa* L., whether growing or not; the seeds thereof; the
19 resin extracted from any part of the plant; and every compound,
20 manufacture, salt, derivative, mixture, or preparation of the plant,
21 its seeds, or resin. “Cannabis” or “marijuana” does not include the
22 mature stalks of the plant, fiber produced from the stalks, oil or
23 cake made from the seeds of the plant, any other compound,
24 manufacture, salt, derivative, mixture, or preparation of the mature
25 stalks (except the resin extracted therefrom), fiber, oil, or cake, or
26 the sterilized seed of the plant which is incapable of germination.

27 (d) “Fund” means the Medical Cannabis Licensing Fund
28 established in subdivision (a) of Section 22993.10.

29 (e) “Account” means the Medical Cannabis Enforcement
30 Penalties Account established in subdivision (b) of Section
31 22993.10.

32 (f) “License” means a license issued by the department pursuant
33 to this division.

34 (g) “Licensee” means any person holding a license issued by
35 the department pursuant to this division.

36 (h) “Medical marijuana” or “medical cannabis” means marijuana
37 that is authorized under Section 11362.5 of the Health and Safety
38 Code or regulated under the Medical Marijuana Program.

1 (i) “Medical Marijuana Program” means Article 2.5
2 (commencing with Section 11362.7) of Chapter 6 of Division 10
3 of the Health and Safety Code.

4 (j) “Person” means a person as defined in Section 30010 of the
5 Revenue and Taxation Code.

6 (k) “Compassionate Use Act” means the Compassionate Use
7 Act of 1996 (Section 11362.5 of the Health and Safety Code)
8 enacted by initiative measure (Proposition 215) approved by the
9 voters at the November 5, 1996, general election.

10 (l) “Primary caregiver” means a person designated by a medical
11 marijuana patient as his or her primary caregiver under the
12 Compassionate Use Act.

13 (m) “Sale,” “sell,” or “sold” includes any transfer of title or
14 possession for consideration, barter, or exchange, by any manner
15 or by any means.

16 (n) “Seller” means any person making a sale of medical
17 marijuana in this state.

18 (o) “Cultivator” means any person cultivating medical marijuana
19 for sale in this state.

20 (p) “Distributor” means any person distributing medical
21 marijuana for sale in this state.

22 (q) “Producer” means a person cultivating medical marijuana
23 or packaging it, or both, for sale in this state.

24 (r) “Indicia” means a mark, sign, stamp, or other evidence of
25 issuance of a license and payment of applicable fees, as required
26 by this division.

27 22992.20. (a) The State Department of Public Health shall
28 administer this division to establish a statewide program to license
29 producers, distributors, and sellers of medical cannabis. The
30 department may adopt and enforce regulations relating to the
31 administration and enforcement of this division.

32 (b) No person is subject to the requirements of this division if
33 that person is exempt from regulation under the United States
34 Constitution, the laws of the United States, or the California
35 Constitution.

36 (c) This division does not apply to activities of a patient under
37 the Compassionate Use Act who cultivates and uses medical
38 marijuana exclusively for his or her own personal medical use, as
39 provided for in the Compassionate Use Act.

1 CHAPTER 2. LICENSE FOR PRODUCERS, DISTRIBUTORS, AND
2 SELLERS OF MEDICAL CANNABIS
3

4 22992.25. (a) Commencing on the effective date of licensing
5 regulations adopted by the department relating to the production,
6 distribution, and sale of medical cannabis pursuant to this division,
7 a person that produces, distributes, or sells medical marijuana shall
8 have in place and maintain a license to engage in the production,
9 distribution, or sale, as appropriate, of medical cannabis pursuant
10 to this division.

11 (b) A license is not assignable or transferable. A person that
12 obtains a license, that ceases to produce, distribute, or sell as
13 specified in the license, or that never commenced those activities
14 and decides not to do so, or whose license is suspended or revoked,
15 shall immediately surrender the license to the department.

16 (c) A license shall be valid for a 12-month period, and shall be
17 renewed annually.

18 22992.30. (a) An application for a license shall be filed on a
19 form prescribed by the department and shall include all of the
20 following:

21 (1) The name, address, and telephone number of the applicant.

22 (2) The signature of the applicant.

23 (3) A description of the manner in which the person is authorized
24 to possess, cultivate, or provide medical marijuana pursuant to the
25 Compassionate Use Act or the Medical Marijuana Program, or
26 both. This may include a requirement that the applicant provide
27 copies of written designations, designating the applicant as primary
28 caregiver, executed by medical marijuana patients under the
29 Compassionate Use Act.

30 (4) A list of all prospective employees, their identifying
31 information, and a description of their duties.

32 (5) Any other information the department may require.

33 (b) The department shall investigate to determine the truthfulness
34 and completeness of the information provided in the application,
35 and shall include these costs within the application fee. The
36 department may deny an application if the applicant knowingly
37 made a false statement of fact required to be revealed in the license
38 application.

39 (c) The applicant and each prospective employee shall submit
40 to a criminal background check conducted by the Department of

1 Justice. The cost of this background check shall be paid by the
2 applicant.

3 (d) The department shall provide electronic means for applicants
4 to download and submit applications.

5 22992.35. The department may deny the application for
6 licensure if the application is incomplete or if the department finds
7 that the applicant has not demonstrated, to the satisfaction of the
8 department, that the applicant will comply with the requirements
9 of this division, including, but not limited to, the rules and
10 regulations of the department and the board.

11 22992.40. (a) An initial license fee, not to exceed ____ dollars
12 (\$____), shall be submitted with each application.

13 (b) A fee, not to exceed ____ dollars (\$____), shall be submitted
14 for each application for the annual renewal of a license.

15 (c) If a license is reinstated after its expiration, the licensee, as
16 a condition precedent to its reinstatement, shall pay a reinstatement
17 fee not to exceed ____ dollars (\$____).

18
19 CHAPTER 3. MEDICAL CANNABIS LICENSING INDICIA PROGRAM

20
21 22992.45. (a) The board shall administer the indicia program
22 pursuant to this chapter.

23 (b) The board, in consultation with the department, shall design
24 a system requiring the use of indicia upon all medical marijuana
25 using reasonably available technology to facilitate all of the
26 following related to the production, distribution, and sale of
27 medical marijuana pursuant to a license under this division:

28 (1) Secure production, distribution, and sale of uncontaminated
29 and affordable medical marijuana product.

30 (2) Effective enforcement of applicable state laws.

31 (3) Effective tracking and tracing of medical marijuana products.

32 (4) Field auditing and inspections.

33 (5) Elimination and apprehension of counterfeit marijuana
34 product and indicia.

35 (6) Collection of all applicable fees for the purposes of this
36 division.

37 (7) Prevention of marijuana sales that are not authorized under
38 this division, the Compassionate Use Act, or the Medical Marijuana
39 Program.

1 (c) The board shall design, develop, and produce, or may
2 procure, indicia meeting the requirements of this chapter of designs
3 and denominations, as determined by the board, that are suitable
4 to be affixed to product in bulk during production, and affixed to
5 standardized retail medical marijuana packages for distribution
6 and sale.

7 (d) The board, in consultation with the department, shall adopt
8 regulations to determine the standardized design and size of the
9 package, and location of the indicia.

10 22992.50. (a) Commencing on the effective date of the
11 regulations adopted by the board pursuant to this chapter, no
12 licensee shall engage in the production, distribution, or sale of
13 medical marijuana pursuant to this division without complying
14 with this chapter.

15 (b) The regulations shall provide for the distribution of the
16 indicia to licensees for placement on all medical marijuana
17 produced, distributed, and sold in this state, and shall establish the
18 indicia fee to be paid by the licensee, not to exceed ____ dollars
19 (\$____) per indicium for bulk product in production, and not to
20 exceed ____ dollars (\$____) per indicium for standardized retail
21 medical marijuana packages for distribution and sale.

22 (c) The fee imposed and levied pursuant to this section shall be
23 paid, and the indicia shall be used, in a manner determined by
24 regulations adopted by the board. The indicia fee shall not exceed
25 the cost of administering and enforcing the indicia component of
26 this division including, but not limited to, all administrative costs
27 of the board and the department.

28 22992.55. (a) The indicia shall have tracking and tracing
29 capabilities utilizing high-security encrypted coding, similar to
30 that in use on tobacco commercialized in California, to reasonably
31 ensure and monitor that all medical marijuana produced,
32 distributed, and sold in California is in compliance with applicable
33 law.

34 (b) The indicia shall be secure, counterfeit resistant, and
35 encrypted with certain information to identify, at a minimum, all
36 of the following:

37 (1) The name and address of the party affixing the indicia to
38 the final units of sale.

39 (2) The date the indicia are affixed to the final units of sale.

40 (3) The denominated value of the indicia.

1 (c) The indicia shall be readable and traceable from the point
2 of production to the point of sale and shall be readable by a scanner
3 or similar device that may be utilized by the department, the board,
4 or licensed medical marijuana product producers, distributors,
5 sellers, and others, as determined by regulations adopted by the
6 board.

7 (d) The indicia shall be produced in a secure facility certified
8 in accordance with accepted industry security assistance standards,
9 shall incorporate overt, semicovert, and covert data, and shall
10 capture encrypted data in real time. The encrypted data collected
11 shall be provided by producers, distributors, and sellers, and shall
12 be retained by the state in a secure data collection, management,
13 and decision support system.

14 (e) Only parties approved by the regulations of the board shall
15 affix and cancel the indicia. The regulations shall not authorize
16 any person to sell indicia except duly constituted agents and
17 assistants of the board or the department.

18 (f) Licensees shall maintain records in regard to medical
19 marijuana products and the associated indicia, as prescribed by
20 the board, in consultation with the department, and those records
21 shall be available to the department and the board for inspection
22 and audit.

23
24 CHAPTER 4. MEDICAL CANNABIS PRODUCT SAFETY INSPECTION
25

26 22992.60. (a) In order to ensure patient safety, the department
27 shall establish a program of medical marijuana testing with the
28 goal of ensuring that medical marijuana distributed under the
29 Compassionate Use Act is free from contamination and not
30 otherwise adulterated.

31 (b) The program shall take random, periodic, and focused
32 samples of product from producers, distributors, and sellers for
33 the purposes of conducting laboratory testing of the product to
34 ensure that the product is not contaminated by pesticides or other
35 dangerous chemicals, or otherwise adulterated.

36 (c) The department shall pay the producer, distributor, and seller
37 for samples taken pursuant to this chapter in a manner established
38 by regulations of the department. Moneys in the fund may be used
39 for this purpose.

1 22992.65. The department shall, in consultation with the
2 California State Board of Pharmacy, establish a facilities inspection
3 program to inspect licensee cultivation, packaging, distribution,
4 and retail facilities to ensure hygienic conditions and product
5 safety.

6 22992.70. (a) The department shall establish a product testing
7 and facilities inspection fee not to exceed ____ dollars (\$____) to
8 be assessed to producers, distributors, and sellers of medical
9 marijuana, and to be collected as a component of the annual
10 licensing fee. The fees shall be deposited into the fund. The total
11 fee pursuant to this chapter shall not exceed the costs of the
12 sampling, testing, and inspection program, including, but not
13 limited to, all costs of administration, including, but not limited
14 to, the costs of the California State Board of Pharmacy.

15 (b) The department may directly perform, or may contract with
16 a private or public entity for performance of, its product sampling,
17 laboratory testing, and facilities inspection duties pursuant to this
18 chapter.

19
20 CHAPTER 5. MEDICAL CANNABIS FACILITIES SECURITY
21

22 22992.75. (a) The department, in consultation with the
23 Attorney General, shall establish a medical cannabis facilities
24 security program.

25 (b) The program shall have as a primary goal to ensure that
26 licensee facilities meet all of the following requirements:

27 (1) They do not become magnets for increased violence or theft
28 because of the cannabis located therein.

29 (2) They adopt and follow stringent internal safeguards to ensure
30 security of the medical marijuana product and the facilities.

31 (3) They are not located in inappropriate community settings
32 where traffic safety, incompatible land use, proximity to schools,
33 and other safety issues are raised.

34 22992.80. (a) The department shall establish facility security
35 standards applicable to all licensed facilities, and shall conduct a
36 security inspection of all licensed facilities to ensure compliance.
37 The facilities security inspections may be combined with the
38 product safety inspections conducted under Chapter 4 (commencing
39 with Section 22992.60).

(b) If a licensed facility experiences extraordinary security breaches, in number or severity, the department may order the licensee to enhance the security for that facility, including, but not limited to, upgrading electronic or other security systems or hiring additional security personnel.

22992.85. (a) Within five business days, a licensee shall notify the department and the board of any employee who no longer is employed by the licensee, and any other personnel changes, as determined by the regulations of the department or board.

(b) The names and other identifying information of all prospective new employees shall be provided to the department for a criminal background check and approval prior to commencing their employment.

22992.90. (a) The department shall establish an advisory committee comprised of local health officers, land use officials, and law enforcement officers to discuss local facility security and related land use issues, and to assist committee members in resolving their local facility security and related land use problems.

(b) The department may provide annual grants to cities, counties, or cities and counties for the establishment of increased local security measures that are directly related to assisting the effort to ensure the security of licensed facilities. The grants shall be made from moneys in the fund, and shall not exceed an annual statewide total of _____ dollars (\$_____).

(c) The department shall assess an annual fee to each licensee not to exceed the cost to the department, including, but not limited to, the costs of the Attorney General and the committee, of implementing this chapter. The fee shall be assessed as a component of the license or renewal fee.

CHAPTER 6. FISCAL PROVISIONS: MEDICAL CANNABIS LICENSING FUND

22993.10. (a) All moneys collected pursuant to this division shall be deposited in the Medical Cannabis Licensing Fund, which is hereby established within the State Treasury.

(b) There is hereby established the Medical Cannabis Enforcement Penalties Account within the fund, to receive the penalty amounts collected pursuant to 22993.40.

1 (c) Notwithstanding Section 16305.7 of the Government Code,
2 the fund shall also include any interest and dividends earned on
3 money in the fund.

4 (d) Notwithstanding Section 13340 of the Government Code,
5 all moneys in the fund, except for moneys in the Medical Cannabis
6 Enforcement Penalties Account, are hereby continuously
7 appropriated, without regard to fiscal year, to the department solely
8 for the purpose of fully funding all costs associated with
9 implementing, enforcing, and administering this division with
10 respect to the purpose for which those moneys were collected.

11 (e) Moneys in the Medical Cannabis Enforcement Penalties
12 Account shall be available, upon appropriation by the Legislature,
13 for the purposes of this division.

14 (f) The department and the board shall enter into an interagency
15 agreement relating to the allocation of moneys in the fund from
16 the department to the board for costs incurred in the performance
17 of the board's duties under this division.

18 22993.15. (a) The setting of fees pursuant to this division is
19 exempt from the rulemaking provisions of the Administrative
20 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
21 Part 1 of Division 3 of Title 2 of the Government Code).

22 (b) All maximum fee levels pursuant to this division shall be
23 adjusted to reflect annual increases, if any, in the California
24 Consumer Price Index, as recorded by the California Department
25 of Industrial Relations for the most recent year available.

26 (c) The total fees collected pursuant to this division, exclusive
27 of any penalties, shall not exceed the total costs of implementing
28 this division.

29
30 CHAPTER 7. MEDICAL CANNABIS LICENSING ENFORCEMENT
31 AND IMMUNITIES
32

33 22993.20. (a) The department, the board, and their authorized
34 agents shall be the sole agencies for the enforcement of this
35 division and regulation of activity authorized pursuant to this
36 division.

37 (b) A licensee in good standing performing any activities related
38 to the cultivation, packaging, distribution, or sale of medical
39 marijuana within the scope of the license pursuant to this division
40 shall be subject only to the enforcement provisions of this division,

1 and shall be immune from arrest or prosecution for violation of
2 Section 11357, 11358, 11359, or 11360 of the Health and Safety
3 Code, or any other provision of law related to the possession,
4 cultivation, packaging, distribution, or sale of marijuana.

5 22993.25. (a) If a licensee fails to comply with this division
6 or any rule or regulation of the department or the board adopted
7 under this division, the department, in consultation with the board,
8 as appropriate, upon hearing, after giving the licensee at least 10
9 days' notice in writing specifying the time and place of hearing
10 and requiring the licensee to show cause why the license should
11 not be suspended or revoked, may suspend or revoke the license.

12 (b) The notice may be served personally or by United States
13 mail, postage prepaid, to the licensee at the licensee's last known
14 address or place of business in this state.

15 (c) The department shall not restore a suspended license, or
16 issue a new license to a person whose license has been revoked,
17 unless the department is satisfied that the person has made a
18 satisfactory good faith showing that the person will comply with
19 this division, including, but not limited to, the rules and regulations
20 of the department and the board.

21 22993.30. (a) Except as set forth in subdivision (c), the
22 immunities set forth in this chapter apply only to activities of a
23 licensee in good standing that are within the scope of the license.

24 (b) The immunities set forth in this chapter do not apply to
25 activities that are knowingly beyond the scope of the license, or
26 that occur while the license is suspended or revoked.

27 (c) (1) If a license is suspended, the order suspending the license
28 shall specify the conduct, including, but not limited to, possession
29 of the product in secure facilities, that remains subject to the
30 immunities set forth in this chapter, pending resolution of the issues
31 upon which the suspension is based.

32 (2) If the license is revoked, the order revoking the license shall
33 specify the manner in which the former licensee shall dispose of
34 the product and close down its operations.

35 (3) Activities authorized under an order suspending or revoking
36 a license are protected by the immunities set forth in this chapter.

37 22993. 35. (a) If, upon inspection of the licensee's facilities,
38 or after laboratory testing of the sample product, the department
39 determines that there is cause to believe that either conditions
40 relating to production, or conditions at the facilities, or adulteration

1 or contamination of the product, present a risk of harm to patients,
2 the department shall so notify the licensee.

3 (b) The department shall require that the licensee take immediate
4 steps to protect patients. The department shall also require the
5 licensee to develop and, after approval by the department,
6 implement an immediate plan of correction designed to resolve,
7 within 30 days, the problems that are the underlying cause of the
8 risk of harm.

9 (c) The department shall establish a focused inspection or
10 product testing schedule to ensure compliance with the plan.

11 (d) Pending full and satisfactory implementation of a plan of
12 correction, the department may temporarily suspend the license
13 pursuant to this section if any of the following apply:

14 (1) The nature of the public health risk warrants a suspension
15 until the problem is corrected.

16 (2) Implementing the plan of correction would require more
17 than 30 days.

18 (3) The correction plan proposed by the licensee is not approved
19 because it does not propose a satisfactory solution.

20 (4) The problem is a recurring problem with the licensee.

21 (e) The licensee shall reimburse the department for the costs of
22 implementing this section. These fees shall be collected at the time
23 of approval of the correction plan. All costs reimbursed pursuant
24 to this subdivision shall be deposited into the fund.

25 22993.40. (a) The department may assess a civil penalty in an
26 amount not to exceed ____ dollars (\$____) per violation against
27 any licensee for knowing or willful failure to comply with any
28 provision of this division, including, but not limited to, any
29 regulation adopted by the department or the board pursuant to this
30 division. The penalty shall be in addition to any other enforcement
31 provisions or remedies that may apply.

32 (b) The penalties received pursuant to this section shall be
33 deposited into the Medical Cannabis Enforcement Penalties
34 Account.